ROGUE LANDLORD REPORT

Citizens Advice Richmond Research and Campaigns Team

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INTRODUCTION

The Housing and Planning Act 2016 contains provisions for local authorities to apply to court for orders to ban “rogue landlords” and letting agents from letting in future. However it has been left to Regulations to specify what should be regarded as “banning order offences”, and the Government has undertaken to consult on the Regulations before they are finalised.

To prepare for this consultation the Research and Campaigns Team at Citizens Advice Richmond has analysed a sample of issues raised by clients in the six months between April and the end of September 2016 that could involve mistreatment by private landlords or letting agents to identify what should be regarded as offences that should lead to these landlords or letting agents being banned from letting in future. The sample consisted mainly of 21 cases in the period where clients had raised issues concerned with private landlords’ harassment, possession action, illegal or retaliatory eviction or actual homelessness from private rented property and a further 42 cases where clients had raised issues about threats to security of tenure or of homelessness or problems with tenancy deposits.

In conducting this analysis the team has recognised that to count as an offence the behaviour of the landlord or letting agent would already have to be against the law and that the Housing and Planning Act 2016 applies only to assured shorthold tenancies. Within these limitations we found evidence to suggest that landlords and letting agents should be banned for the following contraventions of the law:

- letting a property that is a danger to health or safety or does not have the necessary certificates
- failing to carry out essential repairs despite repeated requests
- failing to return a tenancy deposit without good reason
- repeated harassment

We accept that a local authority would need to examine the circumstances of each contravention of the law before applying for a banning order; but it was a feature of some of the cases analysed in our sample that the landlord flouted the law in several ways or with more than one of our clients. This behaviour should clearly strengthen the case for a banning order.

In the next section of this report we explain the reasons for our choice of these forms of mistreatment as the basis for banning orders and provide examples from our analysis of the sort of evidence that we believe supports the conclusions that we have reached. We then raise questions about the enforcement of banning orders that we believe will need to be addressed in the Regulations.

However we also concluded from our analysis that there are other ways in which rogue landlords and letting agents mistreat tenants that are equally serious and ought to be against the law. One of these concerns exorbitant fees charged by

letting agents; but since the Government has now decided that letting agents should be banned from charging fees to tenants we would argue that once the law to ban letting agents from charging tenants fees is in force any letting agent found to have charged tenants fees should automatically be banned from letting in future. In an annexe to this report we explain briefly the other types of mistreatment of tenants that we believe should be made unlawful with examples from the experience of our clients.

MISTREATMENT OF TENANTS TO FORM THE BASIS OF BANNING ORDERS

Letting a property in a dangerous condition and failing to carry out repairs

Since local authorities have powers to inspect privately rented properties where there has been a report of a serious risk to health or safety and, where the risk is substantiated, to force landlords to take action to remove the risk, it seems clear that letting property in a dangerous condition and failing to taking action to remove the risks identified should be grounds for banning the landlord or letting agent responsible from letting in future.

Ramida is an Asian woman living with her partner from Uzbekistan and a son currently being assessed for ASD in a two bedroom privately rented flat. Ramida has an income of less than £400 a month and claims Child Tax Credit, Job Seekers Allowance and Child Benefit as well as Housing Benefit, which only partially covers her rent.

The flat was in poor condition, with a lot of serious disrepair with leaks and damp. The client was living in fear that the bathroom ceiling might collapse and reported that the kitchen ceiling was also damaged. The landlord knew about these issues but just painted over both ceilings even though they were showing clear signs of mould. The landlord had said that he would not increase the rent in recognition of the problems with the property; but when Ramida came to the bureau he was now seeking a rent increase of £100 extra per month. She could not afford this increase and although there were health risks for the whole family she had yet to raise these issues with the local Environmental Health Officer. The family felt powerless to protest as they had no protection from retaliatory eviction because their tenancy had started before 1st October 2015.

Letting a property without evidence of a safe supply of gas and electricity

Landlords and Letting agents providing assured shorthold tenancies must now have their gas supply checked every year to provide a gas safety certificate and should ensure that all electrical appliances are safe. We consider that where there is clear evidence that landlords or letting agents have paid no attention to the safety of the gas supply or electrical appliances this should be grounds for banning them from letting in future. In the following example it is not clear that the gas and electricity supply were unsafe; but it does seem clear that the landlord had not had the supply checked or secured a gas safety certificate before he let the property.

Mahmud is a 77 year old Iraqi man, suffering from several disabilities and in receipt of Attendance Allowance, Pension Credit and Housing Benefit. He moved into a two

bedroom ground floor flat with his 75 year old wife and 40 year old son on a fixed term assured shorthold tenancy which he hoped to renew while waiting to transfer to social housing.

The accommodation was in a house with three flats and two garages. There was a single supply of electricity to the client's flat and to the two garages apparently by means of a supply cable installed by the Landlord. Richmond Council's Environmental Health Officer inspected the property and told the Landlord that the electric cable was illegal; so the Landlord cut the cable. In relation to the gas supply, Mahmud was advised by British Gas engineers that they didn't know where the gas supply went in addition to his flat. He was therefore very concerned that he may have been paying for more than his own gas and electricity supply. The landlord indicated that he was willing to compensate him £200 for the additional electricity costs but did not accept that there was any problem about the gas supply.

Failure to return a deposit without good reason

If a landlord fails to place a tenancy deposit for an assured shorthold tenancy in a government authorised tenancy deposit protection scheme within 30 days of getting it and the landlord later refuses to return the deposit the tenant can take the landlord to court to get it returned; but in addition the court can order the landlord to pay the tenant up to three times the amount of the original deposit, and the tenant need not leave the property at the end of the tenancy if the deposit has not been repaid. These sanctions may be enough to compensate the tenant involved; but in our view where a landlord has been judged to have withheld a deposit not placed in an authorised scheme at the end of a tenancy without good reason this should be taken into account along with other grounds for banning the landlord in deciding whether to apply for a banning order.

Shabir is a 38 year old married man who took out a private tenancy agreement for 9-12 months at a rent of £1500 a month to be paid half in cash. He paid up front a tenancy deposit of £3750, which was not placed in an authorised tenancy protection scheme but was described within the tenancy agreement as a "10 weeks rent guarantee fee".

Shabir and his wife were forced to leave the property prematurely due to severe problems with rising damp (confirmed by the Environmental Health Officer who served notice on the Landlord to rectify it) and gross harassment by the landlord who allegedly entered their property 24 times without notice when they complained about the damp and tried to get him to place their deposit in an approved scheme. As a result of the damp the client's personal property was damaged and heavily mildewed.

The landlord eventually agreed to end the tenancy prematurely, to deduct one month's rent from the deposit and to return £750 in cash on surrender day less any breakages. However Shabir did not surrender the keys as planned as the landlord did not arrive with the remainder of the deposit. As a result, although living with his parents, he remained in possession of the flat and was potentially liable to pay any outstanding rent. He wanted to ensure that his deposit was returned as he needed it to obtain a new flat. He was very angry about how he had been treated and was

considering taking the landlord to court for retaining his deposit illegally, for failing to compensate him for damage to his personal property and for renting out a property which was unfit for purpose.

Harassment

Since harassment on two or more occasions is illegal under the provisions of the Protection from Harassment Act 1997 and can be a criminal offence we consider that where there is clear evidence that landlords have repeatedly harassed tenants they should be banned from letting in future.

Constant harassment by landlady

Rosa is a 64 year-old, single lady, living alone, who signed a private tenancy agreement but six months later came to the bureau, complaining of frequent harassment by her landlady.

Rosa explained that just three months into her tenancy agreement, her landlady tried to make her agree to a change of status from tenant to a lodger and threatened her with eviction when she refused to do this. The following month, her landlady informed the local authority that Rosa was not a tenant at the address, causing her both distress and considerable financial hardship as Rosa's housing benefit payment was stopped and demands for overpayment were made. The landlady continued the campaign of harassment with a stream of phone calls and text messages from both herself and her son, telling Rosa that she needed to leave the property and sign an agreement to that effect. The landlady had also, on many occasions since the start of the tenancy, entered the property without giving the requisite 24 hours' notice. On one occasion, this was at 7.30 am. Rosa became increasingly unwell, suffering from high blood pressure, anxiety and panic attacks. Worried about her personal safety, she contacted the police who investigated and logged the case as harassment, and advised her to change the locks.

On the bureau's advice, Rosa visited the Council's Tenancy Relations office and also made an application for social housing on welfare grounds. Rosa's application was successful and she was re-housed in a housing association flat.

Racial Harassment

Irfaan is a 35 year British Asian who moved into an assured shorthold tenancy with his wife and young baby. The letting agent wrongly advised him to pay the first month's rent on 30 May when the contract required payment on 3 May. As soon as the client discovered the mistake he told the landlady's son that he would pay the arrears for the first month as soon as he received the deposit from his previous tenancy and would pay the next month's rent on 3 June as required. The landlady's son told him that he would start legal proceedings to evict him for rent arrears and the landlady herself came round and shouted and screamed at the client's wife with racial abuse so that his wife no longer felt safe staying in the house on her own with the baby. Irfaan came to the bureau for help to leave the tenancy as soon as possible.

Summary of this analysis

The provision in the Housing and Planning Act 2016 for local authorities to take rogue landlords and letting agents to court to have them banned from letting in future could be an important step forward to improve many tenants' experience of private renting, but not until the Regulations for banning order offences have been enacted to bring this provision into force. We hope that the evidence provided in this report will help to identify the sort of mistreatment of private tenants that should lead to landlords and letting agents being banned from letting and underline the urgent need for the Regulations to be passed so that local authorities can take action.

ENFORCEMENT OF BANNING ORDERS

There are also however several issues concerned with the effective enforcement of banning orders that will need to be addressed in the Regulations.

Impact of banning order on existing tenants

If a landlord is subject to a banning order, what happens to the tenants? It would be unfair if the order had a detrimental effect on their tenancy, which should be allowed to continue as if the order had not been made. So consideration needs to be given as to who would manage these tenancies for the length of the order. If a banning order is served on a landlord, what happens to other properties he/she might let? It is reasonable to assume that if a landlord acts in such a way as to merit a banning order in respect to one property, they will do so for others as well. What happens to the tenants of these other properties? We suggest that either the local authorities in which the properties are located or possibly a nominated housing association should take over the management of these tenancies.

Length of banning orders

How long should banning orders last? There is a good case to be made that the orders should vary in length, so that serious breaches would warrant a lifetime ban, while lesser breaches would attract shorter bans, according to the severity. We suggest that the minimum length of an order should be five years, in order to act as a sufficient deterrent.

Geographical extent

What should be the geographical extent of banning orders? If a banning order results from the application of a local authority in a particular area would the landlord be banned from letting property just in that local authority area, or in that region or in the whole of England and Wales? An order that covered a single local authority area would be of little use, especially in densely populated cities like London, as landlords could simply sell up and buy another property in an adjacent or nearby borough. If banning orders are to be regional or national, then there must be some mechanism to alert other local authorities to their existence, such as a national banning order register, which should also be available to prospective tenants.

ANNEX

LANDLORDS' MISTREATMENT THAT SHOULD BE MADE ILLEGAL

In carrying out our analysis of letting agents' and landlords' mistreatment of tenants who were our clients we encountered three types of mistreatment that although not against the law caused our clients serious problems. These were:

- letting a property without a clear or valid written tenancy agreement
- an unreasonably large rent increase
- mistreatment of lodgers by resident landlords

Letting a property without a clear or valid tenancy agreement

Most letting agents and landlords (except for resident landlords) offer properties for rent with assured shorthold tenancies. To offer this type of tenancy a landlord must provide a prospective tenant with a copy of, or link to, the government guide on How to Rent, a gas safety certificate, an energy performance certificate and place any tenancy deposit required in a government approved tenancy protection scheme. So where a landlord asks a tenant to accept an agreement that is not clearly identified as an assured shorthold tenancy the reason may be to avoid the requirements that landlords have to fulfil for that type of tenancy.

However as the law stands landlords do not have to provide a written tenancy agreement. The terms for an agreement may be agreed orally. Nor if a written agreement is provided does it have to cover all the terms that are required for an assured shorthold tenancy. It is therefore easy for unscrupulous landlords to mislead tenants about what will be required of them for the tenancy and to impose new requirements after the tenancy has started. This means that private tenants have less protection for their accommodation than they would have under consumer law if they were buying other goods or services. There is a strong case therefore for strengthening the law for private tenancies to require letting agents and private landlords to provide a written tenancy agreement that covers all the terms and conditions that will bind the landlord and tenant.

To illustrate the problem we have two recent examples of the same landlord persuading people to agree to inadequately specified tenancies in the same block of flats.

Zara is a 34 year old Turkish music student who moved into a flat with her sister. The landlord asked her to sign an agreement that required her to pay rent of £950 a month in advance and a "one month's/six weeks guarantee" of £1425 (six weeks' rent would be £1315.78) as well as a key deposit of £130 and "agreement fees" of £135. There was nothing in the agreement to indicate that the "guarantee" would be placed in an authorised tenancy protection scheme. Although the agreement form had headings for "**Commencement of Tenancy"** and "**Term of Tenancy"** these were left blank, making it in effect a month to month periodic tenancy, and although the landlord insisted that Zara sign the agreement he never signed it himself.

Zara soon had trouble with the landlord. He wanted her to pay half the rent in cash, which she resisted. He asked her to buy items of furniture for the flat but then told her that they were not what he required. He told her that she could not park her car near the flat. She felt harassed as he made frequent unannounced visits to the flat.

She came to one of our Citizens Advice bureaux for help to leave the flat and followed advice by giving one month's notice and writing to ask for the "guarantee" of £1425 and the "agreement fees" of £135 to be returned; but she had no confidence that this would happen.

Neila came to one of our bureaux for help about the same time as Zara. She is a 31 year old from the Middle East with poor English who works as a waitress. She had responded to a Gumtree advertisement for a room to rent in a flat in the same block where Zara had her flat. The same landlord had offered her this room for £600 a month to be paid immediately in advance. She had made two separate payments within a few days and then moved in. However she did not receive the promised written tenancy agreement and so after two weeks told the landlord that she would not stay. He offered to return her £150 which she refused. She came to the bureau for help because she felt that the landlord had misled her.

Unreasonably large rent increase

For private tenants on a low income a sudden or large rent increase may be unaffordable and cause huge disruption in their lives as they have to search for a new tenancy that they can afford and move from an area where they have become established. We consider that an annual limit should be introduced to restrict the percentage rent increase that landlords can charge.

Frederick is a 69 year old single man with severe health issues including a tumour in his leg and a heart condition. He has a State Retirement Pension and a small personal pension and receives Housing Benefit, Council Tax Reduction and DLA.

He took a 12 month fixed term assured shorthold tenancy in a house with eight tenants on three floors, with two showers and a shared kitchen. The fixed term agreement was not renewed so he then had a periodic tenancy and paid rent of £450 a month. However he came to the bureau when his landlord decided to increase his rent by more than 40% to £650 a month on the grounds that he was seeking a licence from the Council for a house in Multiple Occupation. The client said that he could not afford this increase and had received a notice to quit which seemed not to be in the correct form or properly served.

Miriam is a 30 year old married woman who was living with her partner and young child in a private flat on a 12 month assured shorthold tenancy with a 6 month break clause. Margot's boiler broke down and she asked the landlord to fix it. The landlord agreed but used this as an opportunity to arrange for an agent to revalue the flat so that he could increase the rent. There was no provision within her tenancy contract for the rent to be increased within the 12 month period. Miriam wanted to stay in the accommodation but could not afford the increased rent and was concerned that her landlord would try to evict her at the six month break clause if she refused to pay it.

She was also worried that her tenancy contract did not specify any terms regarding what notice the landlord should give her if she was evicted.

Resident Landlords' mistreatment of lodgers

The provisions of the Housing and Planning Act that will enable local authorities to take rogue landlords and letting agents to court to ban them from letting apply only to assured shorthold tenancies. They will not cover landlords' arrangements to let rooms in their own homes. Lodgers have few rights as "excluded occupiers". Yet as the cost of renting separate accommodation rises renting a room in a landlord's house may be the only form of private renting that people on a low income can afford. It seems wrong that this group of tenants should not have access to basic legal protections available to assured shorthold tenants. In particular we consider that the law should be extended beyond its existing coverage of assured shorthold tenancies to cover resident landlords and at least to

- require resident landlords to provide written agreements that specify the terms of the tenancy, including the rental and notice period and what bills the lodger will be responsible for
- enable lodgers to apply to the Council's Environmental Health Department for investigation of accommodation that poses a serious risk to health or safety if the resident landlords have refused or failed to carry out repairs to remove the risk and
- provide a free disputes procedure for lodgers to use if they want to challenge their landlords' refusal to return a tenancy deposit.

Matthew aged 26 came to the bureau when he had been renting a room with his partner in their landlady's house for three years. He and his partner had their own room, but shared a kitchen, bathroom and front door with their landlady. Matthew had not paid a deposit.

Matthew had several complaints about the state of the premises. He had done some work on the property such as sanding the bathroom floor, at the request of the landlady, which he had agreed to do to get the place into a reasonably liveable state. There were also bare wires in the bathroom which were dangerous. In addition he discovered that he had no access to mains water, and that the water he thought was drinking water was actually tank water. Matthew had suffered stomach problems for the last couple of years which he believed were attributable to this.

At the beginning of his tenancy, the landlady verbally agreed with Matthew that he would not need to pay Council Tax. Without his knowledge the landlady had initially not declared her lodgers to the Council for Council Tax purposes. When the Council had found out that they were living there, they had increased the Council Tax payable and the landlady then created a backdated lodger agreement saying that Matthew and his partner were liable for a share of Council Tax **and** utility bills from the start of the tenancy. Matthew signed this under duress as he was unemployed at that time and felt he would find it difficult to get alternative accommodation.

Matthew came to the bureau for help when he was expecting to start a new job and had decided to move. The landlady had become very difficult and asked for unreasonably long notice; but the Bureau advised him to give one month's notice

both because he paid the rent monthly and that this was the period given in his lodger agreement.

Jane is a 25 year old single woman who signed a six month agreement to rent a room in her landlord's home, paying rent of £800 a month and £800 as a deposit. There were two other lodgers living in the house, and although the landlord spent several months at a time abroad, he also lived there when he returned to the UK.

During Jane's tenancy the toilet became blocked. Initially the landlord said it was Jane's fault, but when she questioned this, he retracted his allegation sending her text message to confirm that it was a misunderstanding.

At the end of the six month period the landlord gave Jane notice to quit and she left about a month later. The landlord said that she would receive her deposit back two days later. However she did not receive it, and instead the landlord sent her a list of deductions for rectifying damage, totalling £805. This included the toilet blockage which he had confirmed was not her responsibility. The list also included several photographs of the alleged damage, some of which were clearly identifiable as being in someone else's room and others which did not identify the location as her room. Several deductions were for minor smudges and scratches, which would fall under "fair wear and tear". Jane was prepared to accept a deduction of £50 to remove some ink marks on the carpet, but disputed liability for all the other items and claimed that the remaining £755 of the deposit should be returned to her. She was advised to write to the landlord to warn him that she would take court action to recover this money if he did not return it.